

IC 35-47-14 Chapter 14. Proceedings for the Seizure and Retention of a Firearm

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IC 35-47-14-1 "Dangerous"

Sec. 1. (a) For the purposes of this chapter, an individual is "dangerous" if:

- (1) the individual presents an imminent risk of personal injury to the individual or to another individual; or
- (2) It is probable that the individual will present a risk of personal injury to the individual or to another individual in the future and the individual:
 - (A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the individual's medication while not under supervision; or
 - (B) is the subject of documented evidence that would give rise to a reasonable belief that the individual has a propensity for violent or suicidal conduct.

(b) The fact that an individual has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the individual is dangerous for the purposes of this chapter.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.6.

IC 35-47-14-1.5 "Responsible third party"

Sec. 1.5. For the purposes of this chapter, an individual is a "responsible third party" if:

- (1) the individual does not cohabitate with the person found to be dangerous in the hearing conducted under section 6 of this chapter;
- (2) the individual is a proper person (as defined under IC 35-47-1-7) who may lawfully possess a firearm; and
- (3) the individual is willing to enter into a written court agreement to accept the transfer of the firearm as a responsible third party under section 10 of this chapter.

As added by P.L.289-2019, SEC.7.

IC 35-47-14-2 Warrant to search for firearm in possession of dangerous individual

Sec. 2. (a) A circuit or superior court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:

- (1) a law enforcement officer provides the court a sworn affidavit that:
 - (A) states why the law enforcement officer believes that the individual is dangerous and in possession of a firearm; and
 - (B) describes the law enforcement officer's interactions and conversations with:
 - (i) the individual who is alleged to be dangerous; or
 - (ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe that the individual is dangerous and in possession of a firearm;

(2) the affidavit specifically describes the location of the firearm; and

(3) the circuit or superior court determines that probable cause exists to believe that the individual is:

(A) dangerous; and

(B) in possession of a firearm.

(b) A law enforcement agency responsible for the seizure of the firearm under this section shall file a search warrant return with the court setting forth the:

(1) quantity; and

(2) type;

of each firearm seized from an individual under this section.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.8.

IC 35-47-14-3 Warrantless seizure of firearm from individual believed to be dangerous

Sec. 3. (a) If a law enforcement officer seizes a firearm from an individual whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the individual believed to be dangerous an affidavit describing the basis for the law enforcement officer's belief that the individual is dangerous.

(b) An affidavit described in subsection (a) shall be submitted to a circuit or superior court having jurisdiction over the individual believed to be dangerous not later than forty-eight (48) hours after the seizure of the firearm.

(c) The court shall review the affidavit described in subsection (a) as soon as possible.

(d) If the court finds that probable cause exists to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm.

(e) A law enforcement agency responsible for the seizure of the firearm under this section shall file a search warrant return with the court setting forth the:

(1) quantity; and

(2) type;

of each firearm seized from an individual under this section.

(f) If the court finds that there is no probable cause to believe that the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual as quickly as practicable, but not later than five (5) days after the date of the order.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.9.

IC 35-47-14-4 Filing of return after warrant is served

Sec. 4. If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court that:

(1) states that the warrant was served; and

(2) sets forth:

(A) the time and date on which the warrant was served;

(B) the name and address of the individual named in the warrant; and

(C) the quantity and identity of any firearms seized by the law enforcement officer.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-5 Requirement of hearing on whether firearm should be returned or retained

Sec. 5. (a) After the filing of a search warrant return under section 2 of this chapter or the

filing of an affidavit under section 3 of this chapter, the court shall conduct a hearing.

(b) The court shall make a good faith effort to conduct the hearing not later than fourteen (14) days after the filing of a search warrant return under section 2 of this chapter or the filing of an affidavit under section 3 of this chapter. If the hearing cannot be conducted within fourteen (14) days after the filing of the search warrant return or affidavit, the court shall conduct the hearing as soon as possible. However, a request for a continuance of the hearing described in this subsection for a period of not more than sixty (60) days from the individual from whom the firearm was seized shall be liberally granted. The court shall inform:

- (1) the prosecuting attorney; and
- (2) the individual from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the individual's health or well-being.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.10.

IC 35-47-14-6 Burden of proof at hearing; court orders

Sec. 6. (a) The court shall conduct a hearing as required under this chapter.

(b) The state has the burden of proving all material facts by clear and convincing evidence.

(c) If the court determines that the state has proved by clear and convincing evidence that the individual is dangerous, the court shall issue a written order:

- (1) finding the individual is dangerous (as defined in section 1 of this chapter);
- (2) ordering the law enforcement agency having custody of the seized firearm to retain the firearm;
- (3) ordering the individual's license to carry a handgun, if applicable, suspended; and
- (4) enjoining the individual from:
 - (A) renting;
 - (B) receiving transfer of;
 - (C) owning; or
 - (D) possessing;a firearm; and

determine whether the individual should be referred to further proceedings to consider whether the individual should be involuntarily detained or committed under IC 12-26-6-2(a)(2)(B).

(d) If the court finds that the individual is dangerous under subsection (c), the clerk shall transmit the order of the court to the office of judicial administration for transmission to NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

(e) If the court orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.

(f) If the court determines that the state has failed to prove by clear and convincing evidence that the individual is dangerous, the court shall issue a written order that:

- (1) the individual is not dangerous (as defined in section 1 of this chapter); and
- (2) the law enforcement agency having custody of the firearm shall return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual from whom it was seized.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.11.

IC 35-47-14-7 If firearm seized is owned by another individual

Sec. 7. If the court, in a hearing conducted under section 5 of this chapter, determines that:

- (1) the individual from whom a firearm was seized is dangerous; and
- (2) the firearm seized from the individual is owned by another individual;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm.

As added by P.L.1-2006, SEC.537.

IC 35-47-14-8 Petition for return of a firearm

Sec. 8. (a) At least one hundred eighty (180) days after the date on which a court orders a law enforcement agency to retain an individual's firearm under section 6(c) of this chapter, the individual may petition the court for a finding that the individual is no longer dangerous.

(b) Upon receipt of a petition described in subsection (a), the court shall:

- (1) enter an order setting a date for a hearing on the petition; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney shall represent the state at the hearing on a petition under this section.

(d) In a hearing on a petition under this section, the individual may be represented by an attorney.

(e) In a hearing on a petition under this section filed:

- (1) not later than one (1) year after the date of the order issued under section 6(c) of this chapter, the individual must prove by a preponderance of the evidence that the individual is no longer dangerous; and
- (2) later than one (1) year after the date of the order issued under section 6(c) of this chapter, the state must prove by clear and convincing evidence that the individual is still dangerous.

(f) If, upon the completion of the hearing and consideration of the record, the court finds that the individual is no longer dangerous, the court shall:

- (1) issue a court order that finds that the individual is no longer dangerous;
- (2) order the law enforcement agency having custody of any firearm to return the firearm as quickly as practicable, but not later than five (5) days after the date of the order, to the individual;
- (3) terminate any injunction issued under section 6 of this chapter; and
- (4) terminate the suspension of the individual's license to carry a handgun so that the individual may reapply for a license.

(g) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

(h) If a court issues an order described under subsection (f), the court's order shall be transmitted, as soon as practicable, to the office of judicial administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by P.L.1-2006, SEC.537. Amended by P.L.289-2019, SEC.12.

IC 35-47-14-9 When law enforcement agency may be ordered to dispose of firearm

Sec. 9. If at least five (5) years have passed since a court conducted the first hearing to retain a firearm under this chapter, the court, after giving notice to the parties and conducting a hearing, may order the law enforcement agency having custody of the firearm to dispose of the firearm in accordance with IC 35-47-3.

As added by P.L.1-2006, SEC.537. Amended by P.L.157-2014, SEC.6.

IC 35-47-14-10 Request to sell or transfer retained firearm

Sec. 10. (a) If a court has ordered a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual or the rightful owner of the firearm, as applicable, may petition the court to order the law enforcement agency to:

- (1) transfer the firearm to a responsible third party as described under section 1.5 of this chapter;

(2) transfer the firearm to an individual who possesses a valid federal firearms license issued under 18 U.S.C. 923 for storage or an eventual lawful sale whose terms are mutually agreed upon between the licensee and the individual or rightful owner, as applicable; or

(3) sell the firearm at auction under IC 35-47-3-2 and return the proceeds to the individual or the rightful owner of the firearm, as applicable.

The responsible third party who accepts transfer of the firearm from the law enforcement agency under a court order under this section shall enter into a written court agreement that obligates the responsible third party to the reasonable care and storage of the firearm, including not providing access or transferring the firearm to the individual found to be dangerous in a hearing under section 6 of this chapter.

(b) An individual or rightful owner of the firearm may petition the court as described in subsection (a):

(1) at the hearing described in section 6 or 9 of this chapter; or

(2) at any time before the hearing described in section 6 or 9 of this chapter is held.

(c) If an individual or rightful owner timely requests a sale or transfer of a firearm under subsection (a), the court shall order the law enforcement agency having custody of the firearm to transfer the firearm or sell the firearm at auction under IC 35-47-3-2, unless:

(1) the serial number of the firearm has been obliterated;

(2) the transfer of the firearm would be unlawful; or

(3) the requirements of subsection (a) have not been met.

(d) If the court issues an order under subsection (c), the court's order must require:

(1) that the firearm be sold not more than one (1) year after receipt of the order; and

(2) that the proceeds of the sale be returned to the individual or rightful owner of the firearm.

(e) A law enforcement agency may retain not more than eight percent (8%) of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee.

As added by P.L.157-2014, SEC.7. Amended by P.L.289-2019, SEC.13.

IC 35-47-14-11 Effect of sale or transfer of retrained firearm

Sec. 11. The sale, disposal, or transfer of a firearm retained under this chapter does not:

(1) alter or terminate an individual's designation as a dangerous person by a court; or

(2) constitute prima facie evidence that an individual is no longer dangerous.

As added by P.L.289-2019, SEC.14.

IC 35-47-14-12 Standard of care for retained firearm

Sec. 12. (a) A law enforcement agency storing a firearm seized under this chapter shall use reasonable care to ensure that the firearm is not lost or damaged, and the law enforcement agency is prohibited from marking the firearm for identification or other purposes.

(b) A law enforcement agency shall be liable for any damage to or loss of the firearm that results from the law enforcement agency's negligence in the storage or handling of the firearm.

As added by P.L.289-2019, SEC.15.

IC 35-47-14-13 Search warrant requirement

Sec. 13. Nothing in this chapter may be construed to authorize a warrantless search or seizure by a law enforcement officer if a warrant would otherwise be required.

As added by P.L.289-2019, SEC.16.